

AG Contract No. KR 03-1065TRN  
ADOT ECS File No. JPA 02-205  
Project No.: TEA-Mrn-0(012)A, (013)A  
TRACS No.: SL 475-01C, SL 486-01C  
Project: 14 foot path located along the  
Santa Cruz River  
5 year Item No.: PAG-2003-7 TIP

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE TOWN OF MARANA

THIS AGREEMENT is entered into 23rd October, 2003, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and THE TOWN OF MARANA acting by and through its MAYOR and TOWN COUNCIL (the "Town").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The Town is empowered by Arizona Revised Statutes Section 9-240 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.
3. Congress has authorized appropriations for, but not limited to, twelve eligible categories of transportation enhancements activities.
4. Such project within the boundary of the Town has been selected by the Town; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.
5. The Town will construct a 14 foot pathway, along the intermediate and upper banks of the Santa Cruz River for a distance of approximately 3.75 miles. The path will be constructed of asphalt concrete and across drainage channels with Portland cement concrete. There will be two landscaped rest areas and information centers. The Town will be responsible for the maintenance, provide electrical and water connections as necessary as well as provide landscape and irrigation to the project area, hereinafter referred to as the "Project". The Town will be the lead agency for the Project.

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NO. 26418  
Filed with the Secretary of State  
Date Filed: 10/23/03

Janice K. Brewer  
Secretary of State

By: Darryl D. Greenwald

The estimated construction costs are as follows:

**Construction Tracts No.: SL 475-01C, SL 486-01C**

Estimated Federal-aid funds @ 94.3%	\$ 998,400.00
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Estimated Town of Marana Funds at a minimum of 5.7%	\$ <u>714,400.00</u>
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<i>Total Estimated Construction Cost (incl. 15% CE Cost):</i>	<i>\$1,712,800.00</i>
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THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

**II. SCOPE OF WORK**

1. The State will:

a. Agree to be the Town's authorized agent for the Project and submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction and funding

b. Approve the Project if such project construction funds are available by FHWA for construction of the Project, the State does hereby designate the Town as lead agent to contract for and administer such construction

c. Enter into a Joint Project Agreement (JPA) with FHWA on behalf of the Town covering the work embraced in said construction contract and will request the authorized federal funds available, including construction engineering and administration costs.

d. After bid opening and award of the construction contract by the Town, make progress payments to the Town for the direct actual cost of the construction of the Project, plus construction engineering, within 30 days after receipt and approval of an invoice.

2. The Town will:

a. With the aid and consent of the FHWA and the State, using Arizona Procurement Procedures, will proceed to advertise for, receive and open bids. Subject to the concurrence of FHWA and the State, the Town will enter into a contract(s) with a firm(s) to whom the award is made for the construction of the project. Such project to be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions and Standard Specifications.

b. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement.

c. Acquire the necessary rights-of-way required for project construction and hereby certifies that all necessary right-of-way have been or will be acquired prior to advertisement for bids and shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the project area and hereby certifies that all obstructions and encroachments have been or will be removed there from prior to the start of construction.

d. Furnish all water for landscaping installation, a point of connection (POC) for the irrigation system, if necessary, and all water necessary to properly maintain the landscaping, all at the Town's expense.

e. Upon completion of construction, shall provide for, at its own cost and as an annual item in its budget for perpetual and proper maintenance of all Santa Cruz River Shared Use Path improvements, including, but not limited to:

- Maintaining healthy landscaping
- Operation and cost of irrigation
- Operation and cost of lighting and electricity, as necessary
- Removal and treatment of weeds
- Safe access to pedestrian facilities
- Safe access to bicycle facilities

As required to maintain the safety and visual quality as established at the Project completion.

f. Install for each project, an ADOT-provided plaque identifying the Project as part of the Transportation Enhancement Program.

h. Upon completion of construction, allow free public access to the Project improvements during normal business hours.

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this agreement. The Town assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to advancing highway user revenue funds; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town. The Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. The cost of the construction and construction engineering work covered by this agreement is to be borne by FHWA and the Town, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, Town agrees to furnish and provide the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue - 616E  
Phoenix, AZ 85007

Farhad Moghimi, Town Engineer/Director  
Public Works Department  
3696 W. Orange Grove Road  
Tucson, AZ 85741


9. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

10. Non-Availability of Funds: Every payment obligation of the State and Town under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State and Town at the end of the period for which the funds are available. No liability shall accrue to the State and Town in the event this provision is exercised, and the State and Town shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

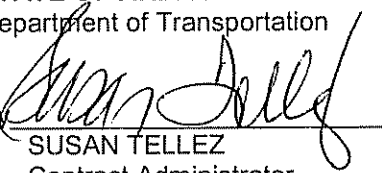
11. In accordance with Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**TOWN OF MARANA**

By   
BOBBY SUTTON, JR.  
Mayor

**STATE OF ARIZONA**

Department of Transportation  
By   
SUSAN TELLEZ  
Contract Administrator

ATTEST:

By   
JOCELYN C. BRONSON  
Town Clerk



CERTIFIED

Original October 7, 2003 Copy X

Adopted by Council October 7, 2003  
Ordinance # Resolution # 2003-110

Joelyn C. Bronson  
Town Clerk

**MARANA RESOLUTION NO. 2003-110**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, ARIZONA, AUTHORIZING THE TOWN OF MARANA TO ENTER INTO AND THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION FOR PARTIAL FUNDING FOR THE CONSTRUCTION OF THE SANTA CRUZ RIVER SHARED-USE PATH.

WHEREAS, the Town of Marana ("Town") has previously applied for and received authorization for federal funds for construction and administration of the shared-use path; and,

WHEREAS, the State of Arizona Department of Transportation ("State") shall be the Town's authorized agent for the project and shall recommend this project for construction and federal funding through Federal Highway Administration ("FHWA"); and,

WHEREAS, the cost of construction and construction engineering covered by the attached Agreement is to be borne by FHWA and the Town, each in the proportions prescribed in the Agreement; and,

WHEREAS, the State designates the Town as lead agent to contract for and administer construction of the project; and,

WHEREAS, the Town will abide by the terms of the Agreement and will proceed to advertise for, receive and open bids for construction of the project; and,

WHEREAS, the State will make progress payments to the Town for direct costs of the construction of the project, plus construction engineering within thirty (30) days of receipt and approval of an invoice from the Town.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Marana, Arizona, that the Town of Marana is authorized to enter into and the Mayor to execute an Intergovernmental Agreement with the State for partial funding of the Shared-Use Path, in the form presented to the Mayor and Council concurrently with this Resolution.

PASSED AND ADOPTED by the Mayor and Council of the Town of Marana, Arizona, this 7th day of October, 2003.

ATTEST:

Joelyn C. Bronson  
Joelyn C. Bronson  
Town Clerk



[Signature]  
Mayor BOBBY SUTTON, JR.

APPROVED AS TO FORM:

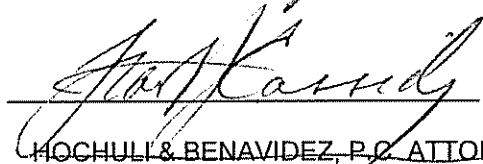
[Signature]  
Frank Cassidy, Town Attorney

APPROVAL OF THE TOWN OF MARANA ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the TOWN OF MARANA, an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the TOWN under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

APPROVED TO FORM

DATED this 8th day of September, 2003.

  
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HOCHULI & BENAVIDEZ, P.C. ATTORNEY

FRANK CASSIDY, TOWN ATTORNEY



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE 602.542.8855

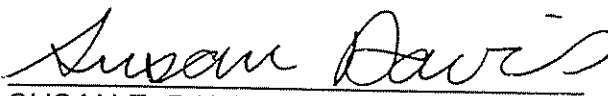
INTERGOVERNMENTAL AGREEMENT  
DETERMINATION

A.G. Contract No. KR03-1065TRN (JPA 02-205), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED October 16, 2003.

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

/ss

att.